

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**YOUNG CONSERVATIVES OF TEXAS
FOUNDATION,**

Plaintiff,

V.

**THE UNIVERSITY OF NORTH TEXAS,
THE UNIVERSITY OF NORTH TEXAS
SYSTEM, NEAL SMATRESK,
PRESIDENT OF THE UNIVERSITY OF
NORTH TEXAS, AND SHANNON
GOODMAN, VICE PRESIDENT FOR
ENROLLMENT OF THE UNIVERSITY
OF NORTH TEXAS,**

Defendants.

CIVIL ACTION NO. 4:20-CV-973-SDJ

DEFENDANTS' NOTICE TO THE COURT

Defendants Neal Smatresk, President of the University of North Texas, and Shannon Goodman, Vice President for Enrollment of the University of North Texas, submit this notice to advise the Court of significant upcoming dates for the University's adoption of an annual operating budget as well as their intention to seek a stay from the U.S. Court of Appeals for the Fifth Circuit of the Court's permanent injunction pending appeal.

Under Federal Rule of Appellate Procedure 8(a)(1), a party must ordinarily first move for such a stay in the district court, which Defendants have done. On May 13, 2022, Defendants filed their Motion to Stay Permanent Injunction Pending Appeal. *See* Dkt. 69. Briefing was complete on June 2, 2022 with the filing of Plaintiff's Surreply. *See* Dkt. 74.

Since the permanent injunction issued, Defendants have completed two separate tuition billing cycles. In billing for the summer 2022 and fall 2022 semesters, the University billed U.S. students who are not residents of Texas at the in-state tuition rate. As explained in Defendants' briefing on their stay motion, Dkt. 69 at 9, Defendants cannot recover the differential in tuition amounts even if the court of appeals determines that this Court's summary judgment erroneously concluded that out-of-state U.S. students may be charged only in-state tuition rates or that the injunction should not have compelled such broad relief. The financial harm already suffered by the University from these revenue losses cannot be remedied and will swell as additional semester billing cycles occur.

The next critical date faced by the University is the preparation and adoption of its annual operating budget. Every public university in Texas must approve an annual operating budget by August 31 each year. *See* TEX. EDUC. CODE § 51.0051. Current plans are to present the University's Board of Regents with a proposed annual operating budget at its quarterly board meeting scheduled for August 11 and 12, 2022. This proposed budget must account for the already realized and anticipated revenue losses resulting from the Court enjoining the University from charging out-of-state U.S. students out-of-state tuition rates. The proposed annual operating budget will be different if a stay is issued and the University is allowed to continue charging out-of-state tuition rates to out-of-state U.S. students.

Because the Court is currently considering Defendants' stay request and a stay would materially impact the University's annual operating budget to be adopted by the Board of Regents, Defendants advise the Court that this very significant budget planning and adoption deadline is approaching. Defendants need a decision regarding a stay by the end of July to effectively plan and adopt the annual operating budget. As a result, Defendants plan to seek a stay from the Fifth

Circuit on Friday, June 24, 2022, should this Court not issue a favorable decision before that date. Federal Rule of Appellate Procedure 8(a)(2)(A)(ii) allows parties to seek a stay pending appeal in the court of appeals when parties first file a motion for stay in the district court and the district court either denies the motion or does not afford the relief requested. Defendants must reserve adequate time for briefing and a decision on a stay motion in the court of appeals before the annual operating budget planning and decision time frame described above. As a result, Defendants intend to seek relief in the Fifth Circuit on June 24, 2022.

Respectfully submitted,

/s/ Wallace B. Jefferson

Wallace B. Jefferson

State Bar No. 00000019

wjefferson@adjtlaw.com

Amy Warr

State Bar No. 00795708

awarr@adjtlaw.com

Melanie D. Plowman

State Bar No. 24002777

mplowman@adjtlaw.com

ALEXANDER DUBOSE & JEFFERSON LLP

515 Congress Avenue, Suite 2350

Austin, Texas 78701-3562

Telephone: (512) 482-9300

Facsimile: (512) 482-9303

Andy Taylor

State Bar No. 19727600

ataylor@andytaylorlaw.com

ANDY TAYLOR & ASSOCIATES, P.C.

2628 Highway 36 South #288

Brenham, Texas 77833

Telephone: (713) 222-1817

Facsimile: (713) 222-1855

Sandy Hellums-Gomez
State Bar No. 2403670
Sandy.Gomez@HuschBlackwell.com
Jeff Nobles
State Bar No. 15053050
Jeff.Nobles@HuschBlackwell.com
HUSCH BLACKWELL LLP
600 Travis Street, Suite 2350
Houston, Texas 77002
Telephone: (713) 647-6800
Facsimile: (713) 647-6884

Scott Schneider
State Bar No. 24054023
Scott.Schneider@HuschBlackwell.com
HUSCH BLACKWELL LLP
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Telephone: (512) 472-5456
Facsimile: (512) 479-1101

**ATTORNEYS FOR DEFENDANTS NEAL
SMATRESK, PRESIDENT OF THE UNIVERSITY
OF NORTH TEXAS, AND SHANNON
GOODMAN, VICE PRESIDENT FOR
ENROLLMENT OF THE UNIVERSITY OF
NORTH TEXAS**

CERTIFICATE OF SERVICE

I certify that on the 17th day of June 2022, this notice was served on all counsel of record via the CM/ECF system of the Court.

/s/ Wallace B. Jefferson
Wallace B. Jefferson